



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 31

[ EPA-HQ-2020-03508; FRL-8540-01-OECA]

#### On-Site Civil Inspection Procedures; Rescission

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; rescission of regulations.

**SUMMARY:** In accordance with the Presidential directive of January 20, 2021, “Revocation of Certain Executive Orders Concerning Federal Regulation,” and in order to ensure appropriate flexibilities to site-specific inspection work, the Environmental Protection Agency (EPA) is rescinding its March 2, 2020 final rule describing certain Agency procedures for conducting on-site civil inspections. This rule applies to on-site civil inspections conducted by federally credentialed EPA civil inspectors, federally credentialed contractors and Senior Environmental Employment employees conducting inspections on behalf of EPA.

**DATES:** This rule is effective on [Insert date of publication in the Federal Register].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-2020-03508. All documents in the docket are listed on the <https://www.regulations.gov> website.

Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Publicly available docket materials are available electronically through <https://www.regulations.gov>. For information on the EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Chad Carbone, Monitoring, Assistance, and Media Programs Division, Office of Enforcement and Compliance Assurance (Mail Code

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## **SUPPLEMENTARY INFORMATION**

### **I. General Information**

#### **A. What action is the Agency taking?**

In accordance with E.O. 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation,” issued by President Biden on January 20, 2021 (86 FR 7049, January 25, 2021), and in order to ensure appropriate flexibilities to site-specific inspection work, the EPA is rescinding the final rule (85 FR 12224, March 2, 2020) that described certain Agency procedures for conducting on-site civil inspections. The prior final rule was promulgated to implement the now revoked E.O. 13892, “Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication” (84 FR 55239, October 9, 2019).

#### **B. What is the Agency's authority for taking this action?**

EPA's policies and requirements surrounding inspection procedures are matters of agency organization, procedure, or practice that lack the force and effect of law. Accordingly, the EPA is not required to engage in a notice and comment process to issue or revise internal procedures under the Administrative Procedure Act (APA). See 5 U.S.C. 553(b)(3)(A), which provides that an agency may issue interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice without providing notice and an opportunity for public comment. The EPA is providing an immediate effective date for this rulemaking because it is procedural rather than substantive. The APA's requirement, 5 U.S.C. 553(d), that substantive rules not be effective until at least 30 days after publication in the Federal Register is inapplicable because this rulemaking is procedural.

### **II. Background**

On October 9, 2019, President Trump issued E.O. 13892, “Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication.”

Section 7 of the now revoked E.O., entitled Ensuring Reasonable Administrative Inspections, provided that: “Within 120 days of the date of this order, each agency that conducts civil administrative inspections shall publish a rule of agency procedure governing such inspections, if such a rule does not already exist.” Section 1, Policy, of E.O. 13892 implied that there was a need for a rule of Agency procedure, due to a perceived lack of transparency on how EPA conducts on-site civil administrative inspections. On March 2, 2020, the EPA published a final rule consistent with E.O. 13892. The final rule, codified at 40 CFR part 31, described certain EPA procedures for governing agency personnel on how to conduct EPA on-site civil inspections (85 FR 12224).

On January 20, 2021, President Biden issued E.O. 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation,” which revoked E.O. 13892. E.O. 13992 states that it is the policy of the Administration “to use available tools to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID-19) pandemic, economic recovery, racial justice, and climate change. To tackle these challenges effectively, executive departments and agencies (agencies) must be equipped with the flexibility to use robust regulatory action to address national priorities. This order revokes harmful policies and directives that threaten to frustrate the Federal Government's ability to confront these problems, and empowers agencies to use appropriate regulatory tools to achieve these goals.” Section 3 of E.O. 13992 directs agencies to take steps to rescind any orders, rules, regulations, guidelines or policies, or portions thereof, implementing or enforcing the revoked Executive orders.

### **III. Discussion**

The inspection rule being rescinded today converted a subset of what had been long-standing civil inspection practices, guided by applicable agency policies, into *rules of Agency procedure* by which “all” civil inspections “shall be conducted.” 40 CFR Part 31.1(a). Although not altering the rights of parties outside of EPA, the change from an Agency practice to a *rule* of procedure reduces the flexibility that is inherent in implementing agency policies in a case-by-

case manner. The procedures for inspections must be adaptable to the site-specific conditions that the Agency faces in conducting its investigations. By rescinding the 2020 inspection rule, EPA is restoring the flexibility needed when carrying out civil inspections under a myriad of circumstances.

Further, the EPA has concluded that the 2020 rule on civil inspections is unnecessary, since procedures described in this rule already exist in inspection guidances and manuals, which are accessible to the public through EPA's website.

Therefore, in accordance with E.O. 13992, the EPA is issuing this final rule to rescind the part 31 regulations.

Section 1, Policy, of E.O. 13892 implied that there was a need for a rule of Agency procedure, due to a perceived lack of transparency on how EPA conducts on-site civil administrative inspections. The EPA notes, however, that the Agency has historically employed methods for public transparency of Agency procedures for conducting on-site civil inspections and will continue these transparency practices under current policies. (These Agency guidances and manuals on the procedures for on-site civil inspections are available to the public on the Agency's website at <https://www.epa.gov>.) In addition, the EPA has met and will meet all statutory obligations pertaining to posting documents for public accessibility. To the extent that concerns arise regarding Agency guidance, a person may -- consistent with the APA -- petition the EPA, including a request to issue, amend, or repeal EPA guidance, by contacting the EPA program office or regional office that is responsible for administering the area of stakeholder interest.

EPA believes that rescinding the part 31 regulations will restore the flexibilities needed to meet the Agency's statutory duties. Therefore, in accordance with E.O. 13992 and for the reasons stated above, the EPA is rescinding its internal agency procedures for conducting on-site civil inspections codified at 40 CFR part 31.

#### **IV. Statutory and Executive Orders Reviews**

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is exempt from review by the Office of Management and Budget (OMB) because it is a rule of agency procedure and practice and is limited to agency management.

*B. Paperwork Reduction Act (PRA)*

This action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

*C. Regulatory Flexibility Act (RFA)*

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule pertains to agency management or personnel, which the APA expressly exempts from notice and comment rulemaking requirements under 5 U.S.C. 553(a)(2).

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children. Per the definition of “covered regulatory action” in section 2-202 of Executive Order 13891 and because this action does not concern an environmental health risk or safety risk, it is not subject to Executive Order 13045.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This regulatory action is a procedural rule and does not have any impact on human health or the environment.

*K. Congressional Review Act*

This rule is exempt from the CRA because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

**List of Subjects in 40 CFR Part 31**

Environmental protection, On-site civil inspection procedures.

Michael S. Regan,

Administrator.

**Part 31 [REMOVED AND RESERVED]**

For the reasons set forth in the preamble, and under the authority of E.O. 13992, the Environmental Protection Agency removes and reserves 40 CFR part 31.

[FR Doc. 2021-28282 Filed: 12/29/2021 8:45 am; Publication Date: 12/30/2021]